MINUTES OF THE
GREENSBORO BOARD OF ADJUSTMENT
REGULAR MEETING
SEPTEMBER 27, 2004

The regular meeting of the Greensboro Board of Adjustment was held on Monday, September 27, 2004 in the City Council Chamber of the Melvin Municipal Office Building, commencing at 2:06 p.m. The following members were present: Vice Chair Joyce Lewis, Marshall Tuck, Hugh Holston, Jim Kee and Chris Conrad. Bill Ruska, Zoning Administrator, and Blair Carr, Esq., from the City Attorney's Office were also present.

Vice Chair Lewis called the meeting to order, and explained the policies and procedures of the Board of Adjustment. She also explained the procedure for appealing any ruling made by the Board.

APPROVAL OF MINUTES OF LAST MEETING

Mr. Conrad said he did have a change. On page 22, in the vote on BOA-04-25, it was his recollection that the votes of Conrad and Sparrow had been transposed. The votes should have read: Ayes: Lewis, Sparrow, Holston. Nays: Conrad, Tuck.

Mr. Tuck moved approval of the minutes of the August 23, 2004 meeting as amended, seconded by Mr. Conrad. The Board voted 5-0 in favor of the motion. (Ayes: Lewis, Conrad, Tuck, Holston, Kee. Nays: None.)

Mr. Ruska was sworn in for all testimony given before the Board today.

ADJUSTMENTS TO AGENDA

Mr. Ruska said there was one request for a continuance and that involved BOA-04-35 and BOA-04-36. Mr. Slaughter was present to ask for the continuance.

Jim Slaughter, 903 West Cornwallis, was sworn and said he represented Homes America. He said the Board members should find a letter in their files that he had sent to the Planning Department, requesting a continuance on September 21, 2004. The request was for a continuance in both matters. He was here last month when they had a hearing. Two days following that, his client received two more notices of violation in the mail, one regarding a sign and one regarding the modular or mobile homes actually being in the right-of-way. They immediately hired Mark Terry, a surveyor, to confirm all the boundary lines. He wrote back and said that because of coordinating with DOT and some problems there, in addition to the weather, that there was no possible way he would have the survey completed by today unless something miraculous happened. Therefore, he was requesting a continuance so that they could confirm all the boundary lines.

Mr. Tuck moved to continue BOA-04-35 and BOA-04-36, seconded by Mr. Holston. The Board voted 5-0 in favor of the motion. (Ayes: Lewis, Conrad, Tuck, Holston, Kee. Nays: None.)

Chris Culbertson, Esq., was sworn or affirmed and said he was speaking to BOA-04-33. His client, Kimberly Dozier, was the owner of the business in question. She was unable to come

today and he felt it would be in the best interest of justice if they could hear some testimony from her. He noticed in the Board's procedural requirements that you asked for an additional set of any pictures to be kept within the Board's records. Due to his lack of familiarity with the Board's procedures, he did not have those either. They would stipulate to the very shortest continuance period that the Board saw fit to allow them.

Counsel Carr said there were apparently two cases involving Ms. Dozier. She asked if the Chair might inquire as to whether counsel was requesting a continuance on both matters.

Mr. Culbertson said the continuance was requested on both matters.

Mr. Conrad moved to continue BOA-04-33 and BOA-04-34.

Mr. Conrad said he would like to add to the motion to continue for 30 days. Mr. Tuck seconded the motion as amended. The Board voted 5-0 in favor of the amended motion. (Ayes: Lewis, Conrad, Holston, Tuck, Kee. Nays: None.)

Counsel Carr said it was up to the Board to determine whether they wanted to hear from others who might be opposed to the continuance, but the power to grant it was still wholly within the Board's discretion.

Vice Chair Lewis asked that anyone opposed to this continuance come forward to speak. She said the Board's vote would be held in abeyance until they heard from the opposition.

Mr. Conrad amended his motion to say the matters were continued until the next calendared meeting for this Board.

William Ernie Walker, 4807 Iredell Road, was sworn or affirmed. He said they had a business directly across the street from this business on Randleman Road. They had put a three by five sign out, were immediately cited and took the sign down. They put a couple of racks of tires out and were immediately cited so they complied. These had been within the last four years. This made a completely unlevel playing field for them. He felt that the gentleman across the street should not have an unfair advantage for doing what was against the law by a degree that was probably 50 to 100 times more than what they did and he would be allowed to gain an unfair advantage for another month and he knew what he was doing. There was no reason given as to why Ms. Dozier was not present. He felt she was not at the meeting because she was playing the continuance game. He asked the Enforcement Officer if it would pay him to just go ahead and put a line of wheels up on the property that he owned as opposed to waiting and playing the continuance game, because he felt that was what they were going to do. The gentleman across the street was putting merchandise all the way down and around that property in order to have an unfair advantage over the other tire dealers on Randleman Road.

Paul Walker, 4719 Clifton Park Road, Jamestown, was sworn or affirmed, and said their business was at 2429 Randleman Road. They had pictures of the business across the street, but that business was open 24/7, the reason being he doesn't move any of this stuff. He had somebody there to watch it to make sure it didn't get gone, so this merchandise stays out like

this 24 hours a day, seven days a week. They moved in on a Sunday when everything shut down and nobody could stop them. Monday morning it looked like the pictures and it has looked like that for the last month.

Counsel Carr said she would caution the Board that the merits of what they were to entertain right now was whether the matter should be continued or not. She was concerned about looking at those pictures to the extent that they get into the substantive matter of the hearing.

Ronnie Bridges, 2327 Randleman Road, said he owned Greensboro Tire. He said he hung banners up because business was slow a few months ago. Inspector Levine came by and said: You can't do that. So they cut the banners down. He had spent $10,000 trying to clean up Randleman Road. The Board would be allowing Randleman Road, with this tire shop, to become a junk street. He said at that tire shop, there must be at least 1,000 used tires setting around outside the perimeter of that property. This was not a matter for continuance. The tire shop was breaking the law. Inspector Levine knew the tire shop was breaking the law. He said he felt they needed a ruling on this.

Mr. Culbertson said they would stipulate that this would be the one and only continuance of the matter. Secondly, he did not see where Ms. Dozier had been cited for tires at all. It was a sign issue. As to why Ms. Dozier was not present, Mr. Culbertson said she had stopped by Friday night with part of the paperwork and delivered the balance of it this morning. She was unable to be here today. He was not sure what the exact circumstances were. He said they entered the Notice of Appeal for Ms. Dozier. Unfortunately, somebody in the City apparently sent the paperwork to her rather than to him, despite the fact that the Notice of Appeal was on his letterhead. He said these gentlemen had objections to be heard and certainly they were not trying in any way to stem their right to be heard. He just wanted to ask that they be allowed to prepare a case. There had been a delay that had been caused at least in part by the fact that the notifications were sent to Ms. Dozier rather than to her attorney.

Vice Chair Lewis asked the Board if they wanted to hear the case today or did they want to continue the matter until the next calendared meeting of the Board?

In response to a question from Mr. Holston, Mr. Ruska said if the Notice of Violation were appealed, then it stayed any enforcement action until the Board made the final decision on the appeal.

Mr. Tuck said he certainly sympathized with the neighboring businesses. He would be concerned that if for the next case, there were only four Board members present, would that still grant the petitioner an automatic second continuance.

Counsel Carr said the Board could make that a condition of the request for a continuance, that they marry themselves to the next hearing date. She did have a concern from a legal perspective that she was not hearing from counsel that he had gotten permission from his client to make that representation.

Mr. Tuck commented further that even if the Board were to hear the case today and they were to lose and they appealed it through the court systems, that would give them the opportunity for the tires to remain there for an indefinite length of time until it goes through the court systems.

So he sympathized with the neighboring businesses, but he was not sure even if the Board heard it and Ms. Dozier lost that the tires would not have to come down until the courts ruled, if they chose to appeal.

Counsel Carr stated that generally they would not take enforcement action if there were subsequent appeals engaged in by applicants.

Mr. Culbertson said regarding the concern about his client's authorizing his continuance motion in this case, he could only say that he thought that if he was supposed to be acting in her best interest as her attorney, it would be kind of ipso facto that he had the authority to do so. If they did not have her present, he thought they had a substantially less likelihood of winning the case and, accordingly, he was acting in her best interest. That was his mandate as her attorney.

Counsel Carr said to Mr. Culbertson that her concern was not that he was requesting the continuance, but he was making a representation that this would be his only continuance and that would hold true, even if there were only four members of this Board come October.

Mr. Tuck said he did not know if Mr. Culbertson was familiar, although Vice Chair Lewis read it, that if there were only four Board members present for a meeting, normally an applicant would automatically be granted a continuance if they so chose. And the Board was saying: "This is it."

Mr. Culbertson said now he did understand the concern. He thought that his client would not have a problem. He could not honestly stand there and say to the Board that she had foreseen this as an issue and had forecast an approval of his representation to the Board. However, he would say this: If the Board granted the continuance on his promise that they would be ready to go next time, and if his client was unready for any reason, he would withdraw from the representation, which he did not think Ms. Dozier would like very much. He did not think she would want that to happen. Accordingly, he would honor his representation as her attorney, he could promise the Board that.

Counsel Carr said possibly to remedy the situation to the extent that the Board was willing to entertain the continuance, provided it was their last bite at the apple, that you could set this matter aside for the moment and go on to your next case and ask Counsel if he would attempt to contact his client and get the appropriate authority. To the extent that he withdrew as counsel of record next time, then the Board would be back to the predicament that they were trying to resolve for these gentlemen that had taken their time to be here today, and that was to be sure that the case would go forward in October. She didn't think that that was met if Mr. Culbertson resigned as counsel at the next meeting.

Mr. Tuck asked Mr. Culbertson if there had been any conversations between him and his client and these business owners? He was looking at Mr. Culbertson's letter dated August 16. This was September 27. He said he was trying to get to the point of Mr. Culbertson's client not being here today and to what degree his client was on notice of the importance of this meeting.

Mr. Culbertson said as to the first part of Mr. Tuck's question, he would say no, sir. As far as he knew, there had not been discussions; certainly between him and these gentlemen there had not been any discussion. To his limited knowledge about his client's interaction with them, he did not know. He rather assumed there had not been. His client, like many clients over the

course of the years, he found assumed that attorneys have some magical powers sometimes. They could go and appear on their behalf and it was not a bad faith kind of supposition on the part of the client, it was just the way people perceived procedures sometimes. He thought in this case that his client was a busy person, she hired an attorney and she thought: "Well, the attorney can take care of everything." It was not so much culpable ignorance or bad faith on her part. It was just an incorrect supposition.

Mr. Tuck asked what was going to change that in 30 days?

Mr. Culbertson said she would be here. He said they did try to reach her. They were not trying to drag anyone's feet. Certainly he was not getting any additional mileage out of this case by having to come back, neither was anybody else. He thought that if it were his call, he would like to have it heard today. He had scheduled the whole afternoon free for it.

Mr. Tuck asked Mr. Culbertson to call her and stress the urgency of it and just tell her that she needed to be here.

Mr. Culbertson said he could say that his secretary had spoken to her. He had made a call. The line had been busy, but he could try.

Mr. Conrad said he thought it was probably a chance for substantial justice to do everything they could to hear the case today. He thought they should pursue those options.

Mr. Tuck said everybody else had taken time out of their schedule and are having to wait, so better to be a little early than a little late.

OLD BUSINESS

SPECIAL EXCEPTION

(A) BOA-04-26: 821 RANKIN PLACE - JULIE DAVENPORT REQUESTS A SPECIAL EXCEPTION AS AUTHORIZED BY SECTION 30-4-4.2(B)2) TO ALLOW A PROPOSED ATTACHED ADDITION TO ENCROACH INTO A SIDE STREET SETBACK AND INTO AN INTERIOR SIDE SETBACK. THE ADDITION WILL ENCROACH 22.5 FEET INTO A 40-FOOT CENTERLINE SETBACK FROM EDGAR STREET AND 2 FEET INTO A REQUIRED 5-FOOT INTERIOR SIDE SETBACK. THE HISTORIC PRESERVATION COMMISSION HAS RECOMMENDED THIS SPECIAL EXCEPTION. THIS CASE WAS CONTINUED FROM THE AUGUST 23, 2004 MEETING. PRESENT ZONING-RS-5, BS-8, CROSS STREET-TATE STREET. (GRANTED)

Mr. Ruska said Julie Davenport was the owner of a parcel located at 821 Rankin Place. This lot was in the College Hill Historic District. This case was continued from the August 23, 2004 meeting. The lot was located at the southeastern intersection of Rankin Place and Edgar Street on zoning map block sheet 8. The property was currently zoned RS-5. The applicant was requesting a Special Exception as authorized by Section 30-4-4.2(B)2) to construct an attached addition to the rear of the existing house. The addition encroached 22.5 feet in to a 40-foot

centerline setback from Edgar Street and 2 feet into a 5-foot interior side setback. At their June 30, 2004 meeting the Historic Preservation Commission recommended this Special Exception. Each BOA member had a copy of the proposed project and a copy of the letter of recommendation in their packet. The lot was a corner lot and was rectangular shaped. It was a nonconforming lot of record. The lot did not meet the current minimum lot width, which was a minimum of 70 feet. Edgar Street was classified as a public street. The dedication for Edgar Street was fifteen (15) feet. The distance from the centerline of Edgar to the property line was only 7.5 feet; thus the addition would need to be 32.5 feet from the property line. The proposed addition would remain in line with the existing house adjacent to the Edgar Street side. The adjacent properties were also zoned RS-5.

Julie Davenport, 821 Rankin Place, College Hill Neighborhood was sworn or affirmed. She said the first item she was giving the Commission was actually a map of the local historic district. She had highlighted in blue Rankin Place, as well as Edgar Street, and boxed in her lot, which was on the corner. The photographs were pictures of Edgar Street going from Rankin to Carr and then coming back, as well as a couple of pictures of the interior setback request. College Hill Neighborhood was developed over the years since the 1800s, beginning with the Troy Bumpass house. The subdivision that created Edgar Alley or Edgar Street was created around 1900 as a service road for the properties along Tate, Carr and Rankin Place. Her house at 821 Rankin Place was built in 1919 in keeping with the narrow lots of the historic neighborhoods long before the ordinance was adopted in 1954. On the east side, which would allow more use of the property and a better design with more usable space, would be a side addition that would not encroach on the setback as much as the utility shop did that was at the back of the lot. The utility shop was a concrete building and she did not know when it was built. It was flush with the side of the existing house. It was a screened-in porch designated to go straight back into the backyard. The extension of the proposed addition would not encroach any more than the existing house. It would not interfere with traffic flow in the alley. If you look at the map from the *Historic District Design Manual*, you would see that all structures along the alley encroach into the current setbacks.

There was no one present who voiced any objection to this request.

Mr. Conrad moved that the Board of Adjustment grant the Special Exception due to the fact that it was in harmony with the general purpose and intent of the ordinance and preserves its spirit, assures public safety and welfare and does substantial justice and also in light of the fact that the Historic Preservation Commission had approved this matter, he believed it was in the City's best interest to allow this addition to occur, seconded by Mr. Tuck. The Board voted 5-0 in favor of the motion. (Ayes: Lewis, Conrad, Tuck, Holston, Kee. Nays: None.)

NEW BUSINESS

VARIANCE

(A) BOA-04-29: 1000 SOUTH ELM STREET - PIEDMONT CONCRETE COMPANY REQUESTS VARIANCES FROM THE MINIMUM STREET SETBACK REQUIREMENTS. *VIOLATION #1:* A PROPOSED STORAGE CONTAINER WILL

ENCROACH 7.87 FEET INTO A 25-FOOT SETBACK FROM SOUTH ELM STREET, TABLE 30-4-6-5. *VIOLATION #2:* THE SAME STORAGE CONTAINER WILL ALSO ENCROACH 3.39 FEET INTO A 25-FOOT SETBACK FROM WEST WHITTINGTON STREET, TABLE 30-4-6-5. PRESENT ZONING-HI, BS-6, CROSS STREET-WEST WHITTINGTON STREET. (APPROVED)

Mr. Ruska said that Piedmont Concrete Company was the owner of a parcel located at 1000 South Elm Street. The property was located at the southwestern intersection of West Whittington Street and South Elm Street on zoning map block sheet 6. The lot was currently zoned HI. The applicant had proposed to locate a detached storage container, which would encroach 7.87 feet into a 25-foot street setback adjacent to South Elm Street and 3.39 feet into a 25-foot street setback adjacent to West Whittington Street. The lot was rectangular shaped and was a corner lot. Any proposed structures would have to meet both street setbacks. The property contained an existing building that encroached into the entire 25-foot setback adjacent to S. Elm Street. The storage container will encroach approximately 17 feet less than the existing building. The applicant had stated that the proposed location was the most reasonable location due to the existing development of the property. The proposed location of the container did not impact the existing parking spaces or the travel flow. The adjacent properties were also zoned HI and the properties located on the adjacent intersections were zoned LI.

Charles Roach, 1000 South Elm Street, said he was with RMC Mid-Atlantic, which was the parent company of Piedmont Concrete. He passed up to the Board some pictures and also a plat drawing of where they planned to locate the proposed container. The first plan showed where the proposed container would be. When they decided to put a container here, they wanted to make sure they were in compliance. They contacted the Zoning Department and found out that it would be an encroachment. Currently they store some metal parts outside for mixer trucks. Steel prices have skyrocketed and theft in that area was a problem. Having said that, they decided that they would also like to put the tires in there because they were in a lower building. Regretfully last month in one of their other companies in Georgia, they had an employee that was killed, run over by an aggregate hauler such as in these pictures on a very congested yard, which was similar to what they had on Elm Street. They were trying to keep the tires and the steel parts in a secure area, out of sight of the public. They planned to put a steel container there and paint it to match the building so it would be aesthetically acceptable and keep the neighborhood clean and secure and, obviously, keep their employees safe. It was a very narrow strip that ran along side and they could not really park there, so they couldn't shuffle their parking around. There were aggregate bins on the backside where trucks go in and out, dumping and loaders were running filling up dump trucks and such things. Mixer trucks were constantly coming in and out of the yard. They were asking the Board to look at this and possibly consider allowing them to put the container here. They felt it was their best option. They have nowhere else to put the tires. For safety reasons, due to the congestion on the lot, they were asking for this variance so that they may resume their business in a safe manner.

Jeff Almond, 485 Hoyt Drive, was sworn or affirmed. The safety issue was the big thing that they were really trying to alleviate. The tires were heavy and they needed to get the tires as close to the shop where their technicians could step outside the shop, get a tire, roll it into the shop and put it on the truck. Where the tires were presently stored, they had to roll them about 200-250 yards. The tires weighed 250 pounds and it was easy for an employee to drop a tire or

fall on it rolling them over tough terrain. If they could get the storage container right next to the shop, they could store the tires inside of it and the employees would be rolling the tires on concrete coming into the shop.

In response to a question from Mr. Tuck regarding rearrangement of the area, Mr. Roach said he thought right now it was indefinite. He said they always look at something to better the situation. Right now it was so congested, they really did not have a spot to put it. Eventually, they might move from Elm Street, he didn't know. However, they are just trying to make the best possible use of the property.

Mr. Conrad asked if Mr. Roach was saying that on the west side of the building, congestion and safety issues were preventing them from storing the container there?

Mr. Almond said on the west side, there were bins and the trucks were constantly pulling in and backing up there. For all practical purposes, they are like storage bunkers where the trucks back up and dump the material. There is a hopper that fed the plant that was stationary and fixed there so it has to be in close proximity or you would have a loader running around all over the yard. They had really looked at this 10 different ways, but they feel this was their only option.

There were no other persons present who voiced opposition to this request.

Mr. Kee said in the case of BOA-04-29, 1000 South Elm Street, based on the stated findings of fact, he moved that the Zoning Enforcement Officer be overruled and the variance granted based on the following: there were practical difficulties or unnecessary hardships that result from carrying out the strict letter of this ordinance; the hardship of which the applicant complained resulted from the unique circumstances related to the applicant's property because of the congestion located on that particular property, which was a heavy industrial use area, and the variance was in harmony with the general purpose and intent of this ordinance and preserves its spirit because the heavy industrial used area and the proposed encroachment of the container was less than the encroachment of the existing building; the granting of the variance assures the public safety and welfare and does substantial justice because it reduced employee exposure to traffic in that area. Mr. Conrad seconded this motion. The Board voted 5-0 in favor of the motion. (Ayes: Lewis, Conrad, Tuck, Holston, Kee. Nays: None.)

(B) BOA-04-30: 2307 PRINCESS ANN STREET - TODD ROBINSON REQUESTS A VARIANCE FROM THE REQUIREMENT THAT UTILITIES TO DETACHED ACCESSORY BUILDINGS BE PROVIDED BY BRANCHING SERVICE FROM THE PRINCIPAL BUILDING. *VIOLATION*: THE APPLICANT IS PROPOSING TO HAVE A SEPARATE ELECTRICAL METER FOR A DETACHED ACCESSORY USE POOL HOUSE. SECTION 30-4-8.5(A), PRESENT ZONING-RS-12, BS-27, CROSS STREET-WEST CORNWALLIS DRIVE. (DENIED)

Mr. Ruska said that Todd Robinson was the owner of the property located at 2307 Princess Ann Street. The lot was located on the western side of Princess Ann Street north of Cornwallis Drive on zoning map block sheet 27. The lot was zoned RS-12. The property contained a single

family dwelling, a detached in-ground pool, and a detached accessory pool building. The applicant was requesting to be allowed to have a separate electrical meter on the detached pool

building. Section 30-4-8.5(A) requires: “For buildings or structures accessory to detached single family and two family dwellings, water, sanitary sewer, and/or any other utilities shall be provided by branching service from the principal building.” The applicant had submitted a plot plan that showed the locations of the structures and the swimming pool. The lot was rectangular shaped and contained approximately 41,700 square feet. The pool house was located in the rear of the property. The in-ground swimming pool was located between the principal house and the pool house. The pool equipment was located in or nearby the accessory pool house. The pool house was located approximately 100 feet from the principal house. The adjacent properties located to the north and west were also zoned RS-12 and the adjacent property located to the south was zoned RS-9.

Terry Brooks, 4 Barrington Drive, represented Todd Robinson and said he was the general contractor for Mr. Robinson. They submitted a letter from the electrician that the main house did not have capacity nor was it feasible to run the service from the main residence down to the pool house. This matter did not arise until after the pool house had been constructed. He said the main house had already been remodeled and the pool house was the addition, although the main house had an addition put on it too. He said running electrical from the house to the pool house would be prohibitive because you could not get underground to get to it now because there was so much stuff on the ground between the pool house and the main house. So to serve the pool house, the capacity for the main house would have to be changed. He said there was an existing power pole off to the left of the pool house, so you could just come right across to the left of the pool house and run a new meter. It would feed the pool equipment and the pool house. The pool house was basically a changing room. There was a bath there and just an open room for children's exercise equipment and such. The pool house was 20 by 29, one story, with a copper roof.

Mr. Brooks said the underground problems were sprinklers and a complete new landscaping planted with trees. However, he was not responsible for that part of it. He was just going with what the electrician had told them.

Mr. Holston said maybe it was costly, but was it possible or feasible to go ahead and do it?

Mr. Brooks said they would have to change the service on the main house also in order to add on the pool house. The main house did not have the capacity to serve both of them. He said they would have to change out the meter in the main residence to increase the amount of electricity that was being carried. He said he didn't know when the ordinance came into being to have only one meter. In previous years, they had done pool houses and had two meters, although that was sometime ago.

Mr. Brooks said the pool house was not planned at the same time as the house renovations. It was a separate project. He said the pool house would have a bath, but other than that, it was just an open building area and would be heated. There were no kitchen facilities or anything like that to where anybody could live there. It would not be used for business purposes since Mr. Robinson's offices were on the third floor of the residence.

There were no persons present to speak in opposition to this request.

Mr. Brooks returned to the podium and stated that there was a vacant lot to the rear of this property, but Mr. Robinson owned the whole property, which was about 200 feet between the

rear of this and the next house.

Mr. Conrad said based on the stated findings of fact in BOA-04-30, 2307 Princess Ann Street, he moved that the Zoning Enforcement Officer be overruled and the variance granted based on the following: That there were practical difficulties or unnecessary hardships that would result from carrying out the strict letter of this ordinance; if the applicant complied with the provisions of the ordinance, he could make no reason use of his property because it would be unreasonable for service to be granted to move from the house in this particular case to the detached addition; also the hardship of which the applicant complained resulted from the unique circumstances related to the applicant's property; the hardship resulted from the application of this ordinance to the property; the hardship was not the result of the applicant's own actions; the variance was in harmony with the general purpose and intent of this ordinance and preserves its spirit because this particular ordinance was meant to prohibit detached dwellings and business offices; the granting of the variance assures the public safety and welfare and does substantial justice because of the stated uses for this pool house. There was no second to this motion and, therefore, the motion died.

Mr. Holston said in the case of BOA-04-30, 2307 Princess Ann Street, based upon the stated findings of fact, he moved that the Zoning Enforcement Officer be upheld and the variance denied, seconded by Mr. Tuck. The Commission voted 4-1 in favor of the motion. (Ayes: Lewis, Tuck, Holston, Kee. Nays: Conrad.)

(C) BOA-04-31: 900 SIXTEENTH STREET - GUILFORD CHARTER SCHOOL REQUESTS A VARIANCE FROM THE MINIMUM STREET SETBACK. *VIOLATION:* TWO PROPOSED DUMPSTERS WILL ENCROACH 12 FEET INTO A REQUIRED 25-FOOT SETBACK FROM CYPRESS STREET. TABLE 30-4-6-5, PRESENT ZONING-GO-M, BS-54, CROSS STREET-CYPRESS STREET. (CONDITIONALLY GRANTED FOR NINE (9) MONTHS

Mr. Ruska said Guilford Charter Schools was the occupant of the property located at 900 Sixteenth Street. The prior use of the property was a church. The lot was located on the south side of Sixteenth Street between Hubbard Street and Cypress Street on zoning map block sheet 54. The lot was currently zoned GO-M. The applicant was requesting a variance from the minimum street setback for two dumpsters. The dumpsters would encroach 12 feet into a required 25-foot setback from Cypress Street. The City of Greensboro Solid Waste Division required the school to maintain a minimum of two dumpsters. The previous use did not require dumpsters. The applicant did not show a dumpster on the site plan at the time of site plan review. After zoning approved the plan, the Solid Waste Division required two dumpsters to be placed on the site. The applicant began dumpster pad construction adjacent to Cypress Street. Further communication with the zoning office revealed that dumpsters were required to meet setbacks. The property contained frontage on three streets. They were Sixteenth Street, Hubbard Street, and Cypress Street. The main ingress/egress for the school would be from Hubbard Street. The applicant was proposing to leave one driveway open on Cypress Street for the truck to access the dumpster. The applicant had made mention of a future partial street

closing for this portion of Cypress Street. Since that closing had not occurred, the Ordinance requirements still had to be met. Current options for compliance would be to relocate the dumpsters and meet the setbacks, or obtain a variance. The property located on the north side

of Sixteenth Street is zoned RM-18, the property located on the western side of Hubbard Street was zoned GO-M, the properties located on the eastern side of Cypress Street were zoned GO-M and RS-9, and the adjacent properties located to the south were zoned RS-9.

Bruce Bunce, 8404 Corral Creek Drive, Colfax, was sworn or affirmed. He said Mr. Ruska's summary covered most of the reasons for this request. He added that the school was requesting two dumpsters, one for general trash purposes and the other for recycling. As mentioned, the church that previously used the property did not have a dumpster so they were venturing into something for the first time. The present location for the dumpsters, until they could resolve the parking lot, was off of the Hubbard side, which was where most of the drop-off and parent pickup was occurring. So they were requesting that the dumpsters be located to the east side of the building. If it needed to be in the parking lot, then they still needed to resolve the issue of the setbacks according to how it was zoned on that side. Right now, it was temporarily sitting in the middle of the parking lot. The temporary location shown on the site plan was about where the dumpsters were now. He said the present location had caused some concern by the neighbors. The school would like to begin a recycling program as they had had in the last three years at the previous location. Until this was resolved, they just haven't offered a recycling program. Eventually when Cypress Street is closed and they anticipate that happening in March of 2005, he had a plan of where the turnaround would be. In trying to resolve this before the variance was requested, he had numerous conversations with the Department of Sanitation, which felt very strongly that the proposed location really worked better for them in terms of drop-off and pickup. From a safety issue, it would eliminate crossing over the same parking area where the drop-off of the children occurred.

Mr. Bunce said they were discussing moving the dumpster and were in the process of creating a master plan that would add onto the school. That had not been finalized. What they did know at this point was by adding onto the school, they would be in need of a lot more parking areas, so parking was a premium where the current location of the dumpsters was. So they would be coming back and likely trying to move the dumpsters. There was a chance, if this variance were approved, that they wouldn't have to do that. Until the Cypress Street closing, there had to be 25 feet to the west of Cypress Street. If it were moved northwest, it would get into some of the playing fields, which they thought were critical as well. He said they owned the property across from Cypress as well, so when the street was closed, it would become all one contiguous property. He said he had been asked by the City to close one of the entrances and they had gotten a temporary hold until they knew the outcome of this request. If he had to close the third entrance, which was the farthest from the school, then the other two entrances become the drop-off and pickup for the children. This school did not have other transportation so every parent has to drop off and pick up their child. The closer the dumpster was to that, the more cumbersome that was, to try to get a large City sanitation truck in and out of there. He said Cypress Street would be closed with the reconstruction of the Sixteenth Street bridge and from everything he could ascertain, it was on track for March of 2005.

Craig Wise, 2502 Hubbard Street, was sworn or affirmed. He said right now the dumpster was right outside his living room window and he was tired of looking at it and it was doing nothing but devaluing his property. He also wanted to make sure that they did not put the dumpsters

along the properties at the back of the parking lot. He would also like to ask if, when they put it up there by the school, there was a fence to be intended to be put around the dumpster also. He would like to see it moved as soon as possible because it is very unsightly.

Mr. Bunce said the issue with the fencing would be resolved as soon as the permanent location is determined and they would put the fence up as soon as possible.

Mr. Conrad commented that certainly the closing of Cypress Street was something that would impact the situation here. He was not sure that he was comfortable with the testimony so far about whether or not that was going to occur.

Vice Chair Lewis said the matter before the Board was the variance. The closing of the street would not impact on the variance.

Mr. Bunce said they had already spent in excess of $2,400 putting in a new pad. However, they were also prepared to put up fencing at another $3,500 to go around both dumpsters, as required. So what he would like to avoid was doing it twice, once now and once there was more certainty around the Cypress Street closing.

Mr. Tuck said, knowing how tight money was and especially for schools, he was thinking of putting a nine-month time frame on this variance until the proposed street closing was going to happen and then if in nine months it had not happened, they would have to come back and may have to move it. However, he hated for them to have to throw away the money they had spent already if it was, in fact, true that was going to happen.

In response to a question from Mr. Conrad, Mr. Bunce said he thought the nine months was sufficient; that would take them to March, if that was what Mr. Conrad's question was. In the meantime, they were working on a master plan for the school that should be done within the next 60 days. If that changed the location of the dumpster, he would be happy to bring that forward as well.

In response to a question from Mr. Kee, Mr. Bunce said the present location of the dumpster did impact the neighborhood because it did not have a fence around it and it required an awkward pull in for the sanitation trucks to get to it.

In response to a question from Mr. Kee, Mr. Bunce said there would not be a negative impact if the dumpsters were to be moved to the proposed site, which was right off Cypress Street. Even if Cypress were not closed, there still would not be any negative impact. They would put a fence up, if that were the determined location.

Mr. Tuck said in BOA-04-31, 900 Sixteenth Street, he would incorporate the Zoning Administrator's statement of findings of fact and based on those findings of fact, he moved the Zoning Enforcement Officer be overruled and the variance granted based on the following: That there were practical difficulties that resulted from carrying out the strict letter of this ordinance in that the current location of the dumpster was closest to the building and not placed in a parking lot where City trucks could be going through that at a time when the children were being brought in or dismissed from school; that the location was across the street from vacant non-residential property that the school currently owns; that there were plans for Cypress Street

to be closed in this area and although that could not be confirmed or denied, he would like to put a nine (9) month condition on the location of the dumpster until more information was received or Cypress Street was formally closed by the City; that the variance was in harmony

with the general purpose and intent of the ordinance and preserves its spirit because it kept the dumpster close to the facility and kept it out of the parking lot where vehicular and pedestrian traffic was its greatest. Mr. Conrad seconded this motion. The Board voted 5-0 in favor of the motion. (Ayes: Lewis, Conrad, Tuck, Holston, Kee. Nays: None.)

Vice Chair Lewis declared a 5-minute recess.

(D) BOA-04-32: 411 WEST WASHINGTON STREET - THE BOULEVARD COMPANY REQUESTS A VARIANCE FROM THE CENTERLINE STREET SETBACK REQUIREMENT. *VIOLATION*: A PROPOSED MULTIFAMILY BUILDING WILL ENCROACH 6.5 FEET INTO A REQUIRED 30-FOOT SETBACK FROM THE CENTERLINE OF BLANDWOOD AVENUE. TABLE 30-4-6-5, PRESENT ZONING-CB, BS-1, CROSS STREET - BLANDWOOD AVENUE. (APPROVED)

Mr. Ruska said the Boulevard Company, LLC was the owner of a parcel located at 411 West Washington Street. The property was located at the southeast intersection of West Washington Street and Blandwood Avenue on zoning map block sheet 1. The lot was currently zoned CB. Current tax records indicate the lot was vacant. A proposed multifamily building that would contain condominiums would encroach 6.5 feet into a 30-foot centerline setback requirement from Blandwood Avenue. The lot was a corner lot. This portion of West Washington Street was classified as a collector and Blandwood Avenue was classified as a sub-collector street. The building wall adjacent to Blandwood Avenue was proposed to be zero lot line. The setback requirement was zero lot line or 30 feet from the centerline (whichever is greater). Blandwood Avenue currently had a forty-seven-foot right-of-way and would be considered a substandard road dedication. The applicant was proposing to be zero lot line or 23.5 feet from the centerline of Blandwood Avenue instead of 30 feet as required. The development was proposed to be constructed as one building that would also contain a parking deck. The adjacent properties were also zoned CB.

John Kruger, 7361 Bedfordshire Drive, Charlotte, NC, was sworn or affirmed. He was with FMK Architects and they represented the owner, Boulevard Company, and developer of the parcel. FMK was contracted to work with them with the past year as they looked at the parcel with the previous owner, Preservation Greensboro, to address the parcel so that it would work with the interests of Downtown Greensboro on how to create infill housing of reasonable and small scale that would be affordable on that site, as well as it would be reasonable with Preservation Greensboro to work with the Blandwood Mansion that was across the street. He said the Board members were given a site plan showing the Blandwood Estate to the left on that plan. In keeping with the zoning, the reasonable use of the property based on a CB district was trying to create a streetscape edge for an urban area. The intention off the setbacks, zero and 30-feet, would be to both create an opportunity for urban use of up to zero-foot of the property line, but also a 30-foot setback that helped to create a streetscape edge. In this situation, they were asking for a variance on Blandwood Avenue only because of what they considered to be a substandard right-of-way assignment, which was 47-feet instead of the typical 60-feet.

Washington Street was actually wider. With the street reduction, that forced them back into the property within that urban district. This was a small vacant parcel. With the small parcel and streetscape, that would cut into the property where it would restrict the type of development that could happen there and still maintain the interests of Preservation Greensboro and Downtown

Greensboro development for that opportunity. The building would be three stories over parking. The parking was small and limited by the site and any type of restriction from Blandwood would cut unnecessarily out of the building. Parking was not required by the CB district, but was required by market. If it did not happen, it would adversely affect the property and the type of project that was of interest to put in Downtown Greensboro. He presented a rendering on Washington and Blandwood at the corner.

Bill Sewell, 1200 Lakewood Drive, was sworn or affirmed. He was president of Preservation Greensboro. One of their charges was to maintain the integrity of the Blandwood Mansion and to protect the cultural heritage for an important part of Downtown Greensboro. They bought this land, which was a parking lot for Jefferson-Pilot Corporation, three years ago in order to protect the eastern flank of Blandwood. They found the Boulevard Company and consummated the sale. The transfer of title took place last month and he was speaking on behalf of the Board and the Blandwood Mansion to say that they supported what the Boulevard Company wanted to do. This would move them a little closer to Preservation Greensboro and they think that was just fine.

Ray Gibbs, 122 North Elm Street, was sworn or affirmed and said he was president of Downtown Greensboro, Inc. They had been working with the City and other organizations for several years, putting a master plan together for the revitalization of Downtown Greensboro. One of the things within the master plan was the introduction of residential and mixed-use development throughout Downtown. It was their feeling that that residential growth would be the catalyst for other commercial growth, evolving into office development and the increased value within all of Downtown. In the master plan, the new development within the Center City should be built to a modern urban standard and that was why they wanted a street presence. They want the buildings built out to the sidewalk level so there was an urban street front. The issue with the centerline setback in some areas of Downtown, in their opinion, was probably a bit dated back when they were looking at expanding streets within Downtown. Currently they were looking at reducing the size of streets Downtown and putting parking back on the streets and not having traffic move through quite as rapidly and making it more of a pedestrian environment. With the development here, as they worked with the Boulevard Company, they had requested them to use those urban standards of building the building to the street line to create that urban atmosphere for which they had been looking. Blandwood was a very minor street. At that location, it only goes one block further south. It was really a residential collector for the street.

John Hart was sworn or affirmed and said he represented the Boulevard Company. He would answer any questions the Board had about their request. Reducing the size of the structure would involve losing parking spaces and have a significant possibility of the building getting taller. He said making the building taller would not be prohibitive, other than at some point height would become an issue as it neighbors the Mansion and the amount of time and effort that they put into designing a neighbor to the Blandwood historic property. As it got taller, it would become more severe a streetscape.

Mr. Kruger, the architect, said they looked at that issue with the setback with Preservation Greensboro, but they were very concerned about the scale and size of it, so that was part of keeping it down. There wasn't an ability to raise it up without creating a mass that was larger than they would like and losing parking spaces within that site. They could reconfigure on the site but, because there were no rules how far he could set back, that would not accomplish the

interests of Downtown Greensboro. There will be 33 units in the building. If this variance were not granted, because the market was an affordable entry level unit, the units were smaller and it would cut six units out of the mix, which, quite frankly, would potentially cut the ability to even do the project, from a market dynamic. Because it cuts straight up through the building, the units were double loaded straight through. So as you start reducing the width, even though you take 6.5 feet, units require a certain dimension in size to be a viable unit to enter. Once you have taken 6.5 feet, you could not take two or three feet out of each unit to accomplish it. He said there was an underground parking level within that first level and then you have surface parking behind the building at ground level. It was on the streetscape, but because you have lobby in front of it and other facade treatments along the face, there was a kind of streetscape along Washington and Blandwood.

Mr. Ruska said a 30-foot setback from the centerline was a general requirement for the CB district. He said this was the second time that that centerline setback had created a problem. The first one was with Governors Court. They did obtain a variance to what was an excessive setback in the CB area. Now this one had come along. When they redo the UDO to implement a number of the Comp Plan policies, at the same time they would also look at eliminating this centerline setback in the CB district so that a property owner would have to meet the zero lot line requirement and not worry about substandard streets in the CB district.

There was no one present who wished to speak in opposition to this request.

Mr. Tuck moved that in BOA-04-32, 411 West Washington Street, he would incorporate the Zoning Administrator's statement of findings of fact and based on those findings of fact, he would move that the Zoning Enforcement Officer be overruled and the variance granted based on the following: That there are practical difficulties that result in carrying out the strict letter of this ordinance because Blandwood Avenue had a substandard 47-foot right-of-way as opposed to the more typical 60-foot right-of-way and if it were a 60-foot right-of-way, the applicant would not need this variance; that the variance was in harmony with the general purpose and intent of the ordinance and preserved its spirit because there were other residential-type buildings in the CB district that had zero lot line facades; that the granting of the variance assures public safety and welfare. Mr. Kee seconded the motion. The Board voted 5-0 in favor of the motion. (Ayes: Lewis, Conrad, Tuck, Holston, Kee. Nays: None.)

APPEAL OF NOTICE OF VIOLATION

(A) BOA-04-33: 2436 RANDLEMAN ROAD - KIMBERLY DOZIER, OWNER OF RIMS AND TIRES, APPEALS A NOTICE OF VIOLATION IN REFERENCE TO USE OF A PROHIBITED SIGN(S). SECTIONS 30-8-3.2 & 30-5-5.2, PRESENT ZONING-HB, BS-70, CROSS STREET-FARRAGUT STREET. (APPEAL DENIED)

(B) BOA-04-34: 1332 NORTH O'HENRY BOULEVARD - KIMBERLY DOZIER, OWNER OF RIMS AND TIRES, APPEALS A NOTICE OF VIOLATION IN REFERENCE TO USE OF A PROHIBITED SIGN(S). SECTIONS 30-8-3.2 & 30-5-5.2, PRESENT ZONING-LI, BS-13, CROSS STREET-GATEWOOD AVENUE. (APPEAL DENIED)

Mr. Ruska said that Kimberly Dozier, owner of Rims and Tires, was the occupant at 2436 Randleman Road and 1332 North O'Henry Boulevard. The properties were zoned HB and LI. The HB (Highway Business) lot was located on the western side of Randleman Road north of the I-85/40 interchange on zoning map block sheet 70. The LI (Light Industrial) lot was located at the southeastern intersection of North O'Henry Boulevard and Gatewood Avenue on zoning map block sheet 13. The applicant had placed a continuous line of rims and tires that are visible in a parallel manner adjacent to Randleman Road, as well as North O'Henry Boulevard, and along property line boundaries. The zoning office received complaints about the tires and rims at both locations. The applicant was issued Notices of Violation on August 12, 2004 for displaying prohibited signage. The applicant was appealing both Notices of Violation in reference to use of a prohibited sign(s). **Section 30-2-2.11 SIGN**: "Any **object,** device, **display,** or structure, or part thereof, which is used to **advertise**, identify, display, direct, or **attract attention** to an object, person, institution, organization, business, product, service, event, or location by any means, including, but not limited to words, letters, pennants, banners, emblems, trademarks, trade names, insignias, numerals, figures, design, symbols, fixtures, colors, illumination, or projected images or **any other attention-directing device**." **Section 30-1-3.9. Sign regulation purposes.** "The sign regulations, adopted and described in this Ordinance, are found by the City Council to be necessary and appropriate to: (A) Encourage the effective use of signs as means of visual communication; (B) Promote a positive community appearance for the enjoyment of all citizens by eliminating physical and visual clutter; (C) Maintain and enhance the aesthetic environment and the community's ability to attract sources of economic development and growth." The adjacent properties located to the south and on the eastern side of Randleman Road are zoned HB and the adjacent property located to the north and west is zoned CD-HB, and the properties adjacent to the North O'Henry Boulevard property are zoned LI.

Mr. Culbertson said they were making the argument, which they had set forth in their August 18 appeal, that the signs as prohibited by 30-5-5.2 were an exclusive list of signs. The general rule of construction with statutes was that they were to be narrowly construed and that if they were going to be expanded beyond the verbiage that existed in the statute itself, then the burden was on the moving party to show why. There was no contest here that the sign was really not a sign here. The sign was a series of tires. Reviewing the statute wherein prohibited signs were set forth in very clear language, 30-5-5.2, they argued that product line was not included. Those tires that Ms. Dozier had placed in front of her places of business were, in fact, product line. There were salable items. They did sell, they did move and they were replaced by other salable items. As such, they constituted product line. 30-5-5.2 addressed in part (A) promotional items, such as balloons, in subpart (B) animated signs and subpart (C) portable signs, such as sandwich board signs. Subpart (E) natural features signs, (G) signs that imitate traffic control devices, (H) signs that extend vertically, (I) roadside appurtenances, such as roadside benches, planters, etc., and (J) two or more signs placed in a line parallel to the public or private street in a similar fashion. Then 30-5-5.3 listed the signs that were exempt from regulation. The Legislature had taken care here it appears to very carefully enumerate what constituted a sign.

Ms. Dozier would testify that these tires were a product. They were sold. People come in and buy them and take them away and, as such, they constitute part of the product of what she was selling. They understood that there were a couple of gentlemen present who were opposed to allowing this kind of advertising, but they would ask the Board to consider potential business bias as a primary motivating factor in that objection, as opposed to community good spirit as a

primary consideration. Again, he would return the Board's attention to the essence of their defense here. It was all good and well that the sign under 30-2-2.1 had in the past been construed to mean tires. He said he could not speak for what had happened in the past. He didn't know how long ago it had happened. He didn't know whether that was ill advised or not. He didn't know whether it was a case that was similar to this case, but he was arguing from the statute. Someone had taken a great deal of trouble to set forth what a prohibited sign was and they were listed. He did not see tires that were a removable product line listed among the prohibited signs. Accordingly, they would ask the Board to sustain the appeal in this case.

Kimberly Dozier, 1501 Textile Drive, was sworn or affirmed. In response to questions asked of her by Mr. Culbertson, she stated as follows:

She was the owner of the business located at 2436 Randleman Road and at 1332 North O'Henry Boulevard with her husband and her four sons. Tires and wheels were sold at the two places of business. She had tires and wheels setting out in front of both of the businesses. The tires and wheels are salable products and moved often where they go in and she sold them. Then she puts something else out there in place of that, another tire or wheel. The actual tires themselves are sold. The tires that are out there by the street were for sale, wheels and tires both. She said there was a sign on her business. It said: "Rims and Tires." The sign on the top of the building was permanent. They got the applications for the signs before they did that and the applications were approved. She said that she was not trying in any way to violate the ordinances of this City relative to signs. The wheels were there for sale. The people saw them and came in and bought them and then she would put something else out there for sale, a different one out there after they bought those.

In response to questions from Mr. Tuck, Ms. Dozier said the tires were not brought in at night. They were left there all night long. She said it would take about 3½ hours to put them all out and another 3½ hours to put them all back in. They had someone who stayed there all night and they stayed open all night for tires and stuff. It was not from a security standpoint, they were open because she did sell a lot of tires during the nighttime to people off the interstate and different things because nobody else was open for tires during the nighttime.

In response to questions from Mr. Conrad, Ms. Dozier said the tires were sitting on metal rims, turned upside down that kept them from rolling off. The tire was set inside a metal wheel. The tires and both sets of rims for each display were for sale. The tires and wheels were together as a set. The rim on the ground as support for the tires was for sale also. People needed them for a stock wheel. Sometimes they had a bent rim or something and she went out there and found the right one to fit and she sold those too.

The Board members asked Mr. Ruska questions and hypothetical questions. They also asked about certain things that other businesses did and asked if that would also be a sign violation.

Mr. Ruska said what you have here, in staff's opinion, was a portable sign that was prohibited by the ordinance. Clearly it was a display that was designed to attract attention. Therefore, staff feels that it was a prohibited sign-type. The Board might be interested in the fact that the definition of portable sign was any sign not permanently attached to the ground or other permanent structure. That was the first part of the definition of a portable sign. And it includes,

but doesn't limit the definition to certain types of portable signs. Staff feels that they are looking at portable signage.

Mr. Ruska said some of the Board members' questions would have to be answered by Inspector Levine because he was the actual officer who had been there and investigated this.

Mr. Tuck said Mr. Culbertson had mentioned something about Section 30-5-5.2 and he didn't have that with him. What was that?

Mr. Ruska said that was the section on prohibited signs and the third type of prohibited sign was a “portable” sign. It did not address product line, but then you would go back to the definition of what a portable sign was and then you would also take into account what the definition of a sign was. Under Section 30-5-5.3 were signs that were exempt from regulation. Those include governmental signs, works of art with no commercial message, lights and decorations associated with holidays, hand-carried signs, signs located on the interior buildings, signs affixed to vehicles and trailers used in the normal transport of goods, signs affixed to windows of vehicles displaying information in terms of sale of said vehicles, signs not legible from the public or private street and flags of the United States and other countries.

Mr. Culbertson said he thought it would be fair to read subsection (C) of 30-5-5.2. "Portable signs, but not including signs which cannot be read from the public right-of-way and sandwich board signs as permitted by Section 30-5-5.17." Again, his argument would be that what this problem boiled down to was a problem of construction; it was a problem of interpretation. The rule was generally that you don't, if you have a carefully drawn statute, you don't need to read more into it and prohibited signs are all listed. There are eight of them in generic types. Tires were nowhere listed and he thought that the analogy to cars with $400 down, $38 a month, painted on the windshield, sitting right next to the street, was a perfect analogy.

Mr. Conrad said to Mr. Ruska that he was going outside Mr. Ruska's definition in the ordinance a little, but if he would bear with him. A sign was meant to communicate something to the passersby. What, in your opinion, does this sign communicate? If it were a sign, it would communicate something to the public. What was it communicating?

Mr. Ruska responded that it was an advertisement and that was part of the definition of a sign that was used to advertise. It was also meant to attract attention. That was part of the definition of a sign.

Mr. Culbertson said briefly as Mr. Ruska's last point, the community had a means of prohibiting these things and that was the statutory scheme that it had passed through its Legislature. He would wholeheartedly endorse that if the community didn't like these things, it should be included in prohibited signs in the language of the statute.

Barry Levine, Zoning Enforcement Officer for the City of Greensboro, was sworn or affirmed. He said he believed there was a question as to whether the tires and rims were in the right-of-way.

Mr. Conrad said the question was, "Are there any setback or right-of-way violations, according to the Zoning Ordinance, on this property? Was the sign violation the only violation here?" He

was quite surprised that there were not two violations listed, but he was not familiar enough with the process to know. Was the right-of-way or any setback requirement being violated?

Inspector Levine said on Randleman Road, it was two or three feet back of the right-of-way. On North O'Henry, he was right on the right-of-way and they took those in at night, he believed. They took the ones on North O'Henry in at night, but they were right on the edge of the right-of-way, but they were not in the right-of-way.

Vice Chair Lewis said the only appeal the Board had under consideration was on signage. Inspector Levine said that was right.

Mr. Ruska then said he thought this would have to be something the Board members would have to sort out for themselves. To staff, it was clear that these were being used in terms of the definition of signage and that they were advertising through display and they were attracting attention in the way that they were utilized on those two particular properties.

Mr. Kee said he thought one the main issues here was aesthetics and as City Officials, they certainly had to be cognizant of the appearance of our City. Let's remove the tires and stack a row of washing machines across there. Was that something that you would want to see within the City of Greensboro? And also with the competitors, they were adhering to the regulations that you have established; was that correct?

Mr. Ruska responded that they were.

Mr. Conrad said this company was out of bounds when it came to those regulations. Even though there were tires and you could say that they were advertisement or a product, he thought the Board really had to be concerned again with the way it appeared to people riding down the street. In his opinion, if they allowed a customer to display products, what was prohibitive again, using the analogy of washing machines?

Ronnie Bridges, who was previously sworn or affirmed, spoke in opposition to upholding the appeal. He again said he owned Greensboro Tire at 2327 Randleman Road. He presented some pictures of his facility. As the Board could see, they respectfully follow the Code. They do not put tires out in front of their business. They had a showroom in which they displayed tires and a warehouse in which they stored their tires. They do not even put their used tires outside because it was a Code violation when they had tires sitting at the side of the building. They had complied with all of this with Inspector Levine over the years. They had people who came into their store and laughed about the place down the street and call it the "tire fairgrounds." It looks horrible. There were 1,000 tires lying around that place. They had junk wheels lying on the ground on which they have tires sitting in and maybe they were trying to sell them. So what Rims & Tires was doing here was displaying a product and it was improper. It was very plainly stated that warehousing and displays were to be done inside of a building. Furthermore, when

he did a new facility, they would not even allow him on the street to put the name of Michelin or Bridgestone or BF Goodrich on it, only his name. They tried to put a tire in the center of the sign and they wanted to know if it was a trademark. He had said no. They said if it were not a trademark, legally, according to the sign ordinance, he could not even put a tire to let people know that he was in the tire business. His store in High Point says, "Oak Hollow Car Care Center." It had no tires on it; it had none of his vendors' names on it. That was all he was

allowed to put on the street. You can't line the street full of shiny wheels. That was what you saw at VIR, that was what you saw at Charlotte Motor Speedway on race weekends, not in a business district. It just doesn't fit. He didn't care that they were open 24 hours a day. He didn't care that they were a competitor. But they must be clean with what they do. Like the gentleman said a moment ago, it was what our City looks like. He said they didn't want people sitting there and thinking that it was kind of like driving down a street and seeing bars on windows. The people would say that must be a bad part of town to see bars on windows. He was through there last night at 9 o'clock and it was an eyesore. According to Code and the way it reads, they were not legal in what they are doing.

Ernie Walker, previously sworn or affirmed, spoke in opposition to upholding the appeal. He said they had a tire shop directly across the street from 2436 Randleman Road. He was not going to reiterate everything he said before. But if the Board didn't think that it was a sign, then just come on across the street and watch how the people flock over there. It was an unlevel playing field. Think about it; if you allow them to do it, he was going to do it and all the other tire shops on Randleman Road were going to do it. Did the Board want that for their City? First, he agreed with the City as it related to this violation. He would hope that the Board would enforce it and promptly because, again, if not, the Board would be allowing an unfair playing field when it came to this. He said they owned their building. They had spent a considerable amount of money on getting it fixed up nice and neat and clean. That was their goal when they bought it five years ago. They liked the idea that Randleman Road was starting to look cleaner. They thought that when the Southgate Inn was sold, that would clean up a little. They were in favor of cleaning up Randleman Road, not making it look like a junk place. That was what was going to happen if the Board allowed this. He would assume that the Board would not allow this to happen or make sure this violation was enforced because basically the Board would force the other businesses, as well as his, to do the exact same thing for survival. He knew the Board would not want him to put tires all the way around his property, but that was what would happen.

Mr. Tuck stated that Mr. Walker had said he could watch people flock to Tires & Rims. Did he think it was because of the display?

Mr. Walker said their business was selling tires. They might be selling some rims too, but their business was selling tires. They would sell tires because their signs are up one side and down the street and around the corner and that was what everybody saw when they drove down Randleman Road. They don't look to his side, but look at all the shiny wheels that were being allowed to set out there illegally.

Paul Walker, previously sworn or affirmed, spoke in opposition to upholding the appeal. He asked if he would be able to ask questions about other violations, etc.? He wanted to read this because he had put a couple of racks out years ago with tires in them. He rolled them in and out all the time. The violation he received was 30-4-5.13 and he thought it was (B3), since it

was somewhat illegible. It said: "Outside storage or display of material not allowed in Highway Business District Zoning." The description at the bottom says: "To comply with this ordinance, remove all tires not stored in an enclosed building. All the other equipment must be removed to comply with this ordinance immediately." So the Inspectors made him move his tires and put all his tires that he had out under storage so they wouldn't get wet, etc. He complied, and didn't fuss, he didn't complain. He did it in a timely manner and got it done. What was to say if they stack their tires up, one right after the other, that now they don't comply with this, if this was still

in the ordinance? Same thing that the rest of the owners had said. It was obviously a sign. He said for the Board members to drive down Randleman Road, look straight down and when you get close to that business, see where your eyes were going to go. He guaranteed them their eyes would go right to where those rims and tires are. There was no way they could miss it, even if you were not even thinking about buying tires. You will look there just because of the way it looks. The City makes the ordinances and the Inspectors enforce the ordinances. If they did not think it was a violation, we would not be here today.

Mr. Walker was asked, in his opinion, what was the difference between the violation that he had read to the Board a moment ago and the display that was on this property?

When he had his stuff out, it was in racks. He thought the Board had some pictures of the property of Rims & Tires where the Board had asked what was the difference between whether these are up here or these are back there. He had mostly stuff like you see in the back, which were tires stored for display, but they were not covered, they were more out, but they were in a rack like that for display for sale. They weren't shining, there were no rims on them, they were just eight or 10 in a top row and eight or 10 on the bottom row and that rack would be rolled in and out, or that rack was in behind the fence, but it wasn't covered. He received the notice about he needed to make sure that they were all put up, under a covered area. He said his notice was March 20, 2000. He also got one on March 20, 2000 for a small 3 X 5 sign he had put out there, which he took in at night and put back out the next morning. The next morning when the mail came, he received another Notice stating, portable signs were prohibited in all zoning districts. Remove the portable signs immediately. So he got that violation and immediately complied with it.

Mr. Ruska said what Mr. Walker was stating was correct. He probably did get a Notice of Violation for outside storage. What he had tried to do in this was to keep this narrowly focused on the issue of the sign because that was what the appeal was about. But he was correct; in the Highway Business District, you can't have any outside storage of materials. In a Light Industrial Zone, you can have outside storage, but it had to be screened from view.

Mr. Ernie Walker said if the Board would look at the pictures of Rims & Tires, right behind the wheels there were tires stacked for display. They were used tires; that was what they do. You go by there after a nice summer day and mosquitoes will eat you up. With the West Nile Virus being so prevalent, he thought they should all be concerned with this.

Mr. Tuck asked if the violation that Mr. Walker received had been issued to Rims & Tires? Was that still in effect, that Code? He knew Inspector Levine wrote them up for the portable signs, but could he have just as easily written them up for outside storage or both?

Mr. Ruska replied, possibly both, but in this particular instance, it was clear to staff what those wheels and rims were being used for. They were being used for signage to advertise that business and to attract attention.

Mr. Tuck said as he drove down Battleground, from time to time at Merchants Tires, a lot of times they will stack four or five tires up, side wall to side wall, and put a cover over them that said something, would that be considered a portable sign?

Mr. Ruska said no, not necessarily. He said he thought they would have to look at the intent of what they were doing it for. Clearly the intent here, with the case that the Board had before it, was that there were two properties where they are using these wheels and rims as signage. They were using them as attention-directing devices, displays, which were part of the definition, to advertise their business.

Mr. Paul Walker said he had a question on the Battleground scenario. Did they have 100 stacks of tires with signs on them?

Mr. Tuck said there were maybe one or two.

Mr. Paul Walker said that was probably different.

Mr. Tuck said he could not say he was disagreeing. He just thought that this opened a whole avenue for Inspector Levine to stay busy 24 hours a day, seven days a week on sign violations.

Mr. Holston said it looked like a sign to him though, especially if it were stacked up at the street and had a placard over it that said "Michelin," then that would be a sign and probably should be actionable. But that was something for Inspector Levine to work with.

Mr. Ruska explained that part of what they did on a daily basis - No. 1, it was impossible to write an ordinance with the exact language that would cover every single situation that some of you had been trying to get at - was interpret the ordinance and what they do was they look at the intent of the ordinance. And in this particular instance, it was quite clear to them what the intent of this particular business was. Their intent was to use this as signage. In other instances that Board members had mentioned, they may make the interpretation that it was not signage. But they would look at it on a case by case basis and again, it was impossible to write a regulation that was going to cover every single "what if" you might come up with. He said he would go back to purposes of sign regulation and say that if you think that this enhances the aesthetic environment of this community, then you should overrule him.

Mr. Conrad said he agreed that they should consider aesthetics. He was concerned that they had the potential of expanding the definition of a sign to involve things that might be otherwise aesthetically pleasing to the public.

Mr. Ruska said that nobody had talked about expanding any definition of signage. They were dealing with one particular instance here. He thought the Board was trying to get too far a field though of what could potentially be either included or excluded and he thought they had done a pretty fair job of interpreting what the intent of the sign regulations were because you rarely get a case like this.

Vice Chair Lewis said she thought that the interpretation probably was up to the Board to some extent too, as well as for Mr. Ruska. Aesthetically, she could only agree, but she had to also, as he had said, use a common sense approach. Common sense told her that every time a merchant places something outside their store, they were doing it to advertise what they had within. So her concern was not so much whether or not this was a sign, it was how it was interpreted Citywide. And she did have a problem if they were allowing some places to put their merchandise outside because they were pretty or whatever, and because these are unsightly,

which they were, they objected to them. So that was where she was having a problem with this.

Mr. Tuck said the only thing that he could reasonably grasp was the magnitude. Maybe if there were one or two of these tire-rim combinations at the entrance, it would be a different scenario than lining them up around the property. And for those that weren't on the Board at the time, the Board did hear a case one time where a mattress company parked its truck close to the right-of-way each night and the Board backed the City, saying that was a portable sign, because at night they would park it right at the right-of-way when their storefront was probably 200 or more feet behind the right-of-way. In the daytime, the truck would be moved to the storefront.

Mr. Ruska said that that might have been the last appeal that the Board had had of a sign and that was quite a number of years ago now.

Mr. Bridges said he would like to make one comment. First of all, they were not advertising what they had within because they had nothing within. It was all outside. They had a floor jack and maybe a lift of some sort inside the bay. They had nothing else inside; it was all outside. They do nothing but draw attention.

Mr. Tuck said in BOA-04-33 and BOA-04-34, he would like to incorporate the Zoning Administrator's statement of findings of fact and in this case he would find that the Zoning Enforcement Officer should be upheld, seconded by Mr. Holston. The Commission voted 5-0 in favor of the motion, thereby denying the appeal. (Ayes: Lewis, Conrad, Tuck, Holston, Kee. Nays: None.)

(C) BOA-04-35: 3600 SOUTH HOLDEN ROAD - HOMES AMERICA APPEALS A NOTICE OF VIOLATION IN REFERENCE TO DISPLAY HOMES BEING LOCATED IN THE RIGHT-OF-WAY. SECTION 30-8-3.2, PRESENT ZONING-LI, BS-154, CROSS STREET-MCCUISTON COURT. (CONTINUED)

(D) BOA-04-36: 3600 SOUTH HOLDEN ROAD - HOMES AMERICA APPEALS A NOTICE OF VIOLATION IN REFERENCE TO AN ACCESSORY FREESTANDING SIGN WHICH IS LOCATED IN THE RIGHT-OF-WAY. SECTION 30-8-3.2, PRESENT ZONING-LI, BS-154, CROSS STREET-MCCUISTON COURT. (CONTINUED)

Both of these items were continued at the request of the applicant at the beginning of the meeting.

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There being no further business before the Board, the meeting was adjourned at 5:15 p.m.

Respectfully submitted,

Joyce Lewis, Vice Chair

JL/ts.ps